IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 119 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

CONTINENTAL HEALDS MFG.PVT.LTD

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Appearance:

MR MH JOSHI FOR MR MANISH R BHATT for Applicant.

SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 07/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal has referred the following two questions for the opinion of this Court at the instance of the revenue, for assessment year 1984-85 :

1 "Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax and central sales tax liability is paid on or before the due date for furnishing the return of income under section 139(1) addition cannot be made invoking the provisions of Section 438 of the Act?"

2 "Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer not to make addition under section 438 in respect of addition of Rs.2,673/- on account of unpaid P.F.,F.P.F. and E.S.I. liability if the said sum has been paid on or before the due date as defined in explanation below clause (va) of sub-section (1) of section 36?"

2 We have heard Mr.M.H.Joshi, learned Counsel, appearing on behalf of the revenue. Though served none appears for the respondent-assessee.

3 Mr.Joshi fairly points out that first question stands answered by a decision of the Apex Court in the case of Allied Motors (P.) Ltd. vs. C.I.T., 224 I.T.R.677. Following the said decision, we answer the first question in the affirmative i.e. in favour of the assessee and against the revenue.

3 In so far as the second question is concerned, the Tribunal has held that the amount of Rs.2,673/- on account of unpaid provident fund, family pension fund and employees state insurance liability would be allowable deduction and the provisions of Section 43B of the Income Tax Act,1961 would not be applicable if the sum had been paid on or before due date as defined in Explanation below clause (va) of sub-section (i) of Section 36 of the Act. The Tribunal for this purpose has relied upon its own decision in the case of CIT vs. Chandulal Venichand [1994] 209 ITR 7, which pertained to allowability of sales tax liability under section 43B of the Act. Thus, the Tribunal has in effect applied the ratio of the decision of the Apex Court in the case of Allied Motors

(Supra).

4 Having heard Mr.Joshi we do not find any good reason to deviate from the view taken by the Tribunal. The Tribunal has rendered its decision after taking into consideration the scheme of the Act as provided in Section 43B read with Section 36(1)(va) of the Act. Therefore, on the basis of the ratio of decision in the case of Allied Motors (Supra), we hold that the Tribunal was right in law in directing the assessing officer not to make addition under section 43B of the Act in respect of unpaid liability relating to P.F., F.P.F. and E.S.I. in case where the sum had been paid on or before due date as defined in Explanation to Section 36(1)(va) of the Act. The second question is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

5 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt